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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,333

04/18/2006

Vaughn W. North

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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

06/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/541,333

Applicant(s)

NORTH ET AL.

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on April 30, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 11-13 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1, 10, 14, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendment***

Applicant's arguments filed April 30, 2007, have been fully considered but they are not deemed to be persuasive.

Applicant argues that none of the references teach "resistance elements responsive to the reciprocating water surges in a back and forth movement along the flow path".

The examiner disagrees:

Hung discloses a rotating element (A) having hinged resistance elements (D) which allow the rotating element to rotate in one direction no matter the direction of flow of water. This will work with water surges as well and constant current.

Hill discloses a rotating element (11) having shaped resistance elements (10), which allow the rotating element to rotate in one direction no matter the direction of flow of water (see e.g. Fig 3). This will work with water surges as well and constant current.

Thershein discloses a flexible tube (32), which along with a turbine (connected to 29), form resistance elements, is responsive to the weight of the waves (and any water surges) as they move by (or back and forth) above the piston.

Carroll discloses a piston (120 in a tube, which is the resistance element, responsive to the weight of the waves (and any water surges) as they move by (or back and forth) above the piston.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Double Patenting***

Applicant is advised that should claim 1 be found allowable, claims 14 and 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). It is understood that claim 1 claims that the transducer is "for

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positioning at the ocean floor for converting wave action at an ocean surface”, with “a flow path in a substantially horizontal orientation”; claim 14 claims that the transducer is “for positioning at the ocean floor for converting water movement along a shoreline”; and claim 17 claims that the transducer is “for positioning at the ocean floor for converting wave action at an ocean surface”. These differences are all claimed as intended use (e.g. configured for of claim 1 line ), and therefore are not given patentable weight.

***Claim Rejections - 35 USC § 102***

Claims 1, 10, 14, 15 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by either Hung or Hill.

Hung discloses an energy transducer comprising an omni-directional electro-mechanical transducer (A) coupled to a mounting base (T), wherein the electro-mechanical transducer includes an anemometer, with rotatable elements (D).

Hill discloses an energy transducer comprising an omni-directional electro-mechanical transducer (11) coupled to a mounting base (17), wherein the electro-mechanical transducer includes an anemometer, with rotatable elements (10).

Claims 1, 14 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Thershein. Thershein discloses an energy transducer comprising an electro-mechanical transducer (29) coupled to a mounting base (12).

Claims 1, 10, 14 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Carroll. Carroll discloses an energy transducer comprising an omni-directional electro-mechanical transducer (e.g. 40) coupled to a mounting base (e.g. anchor, fig 2).

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571- 272-4821. The examiner can normally be reached on Monday-Thursday from 6:10 AM -3:40 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
June 21, 2007